GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute—Industrial Dispute between the Workmen and the Management of M/S. P. V. Pai and Company, Mangalore.

Award of the Labour Court, Hubli—published.

Read the following papers :—

(1) Letter No. 1679/ST-GR, dated 23rd November 1967 from Shri Syed Azizuddin Ahmed, Presiding Officer, Labour Court, Hubli.

IN THE LABOUR COURT AT HUBLI.

Dated 23rd November 1967.

Reference (ID) (LCH) No. 59 of 1967

Present :

Sri Syed Azizuddin Ahmed, M.A., B.L., ... *Presiding Officer*

Between :

The Workmen of M/s. P. V. Pai and Company, Mangalore represented by the Secretary, S. K. Automobile and Engineering Workers' Union, Mangalore. ... *I Party.*

and

The Management of M/s. P. V. Pai and Company, Mangalore. ... *II Party.*

This is a reference under Section 10 (1) (c) of the Industrial Disputes Act, 1947, made by the Government of Mysore in their Order No. FCL 341 LLD 67, dated 29th July 1967. The points of dispute referred for adjudication are as under :

I. Are the management of M/s. P. V. Pai and company, Mission Street, Mangalore-1, justified in dismissing Sriyuths K. Sheena Naik, U. Umesh, M. Lakappa Shetty and J. Vishwanath Naik ?

II. If not, are the said workers entitled to reinstatement with full back wages or to any other relief ?

2. The cause of the aggrieved workmen has been sponsored and espoused by the S. K. Automobile and Engineering Workers' Union, Mangalore represented by its Secretary. Sri Srinivas, Secretary appeared for the I Party while Sri K. S. Rao, President, General Managements' Association, Mangalore appeared for the II Party. In response to the notices issued by the Court, the parties filed their pleadings dated 11th August 1967 and 24th August 1967 respectively.

3. To put it in a nut-shell, the case of the I Party is that the management dismissed the four aggrieved workmen on a false pretext that they have refused to sign for certain changes in the so called service rules. The domestic enquiry held by the management was stage-managed and violative of the principles of natural justice. The reply is that the domestic enquiry was properly held and that the aggrieved workmen absented themselves at the time of enquiry inspite of service of notice and they have to blame themselves for the natural consequences that followed. In addition to the points of dispute specified in the order of reference, the following issue was raised :

Whether the domestic enquiry is violative of the principles of natural justice ?

The parties examined one witness each and closed their oral evidence. The I Party got marked as exhibts three documents while the IInd twenty-eight. The reprsentative of the management stated that he would stick up to the proceedings of the domestic enquiry. The representative of the I Party exmined one witness and at his instance and on his filing memo dated 21st October 1967, the enquiry officer was put into the witness-box.

FINDINGS

4. The points of dispute specified in the order of reference and the issue framed by this Court may, better, be discussed together as they are interlinked. According to the points of dispute framed by the Government, the onus probendi lies heavily on the II Party to justify its action in dismissing the workmen. In proof of this, the management got marked 28 documents as exhibits. Be it to the credit of the parties there is not much controversy about the actual aspects of the dispute. I have to just examine the correctness and the validity of the stand taken by the workmen in the dispute. The management owns and runs an automobile

workshop and the aggrieved workmen were its employees working as Fitters and Helpers. The management, among other things, renders indoor and outdoor service to its customers. In case a vehicle gets stranded on the road and on receiving a requisition to attend to the job, the management would send their workmen providing them conveyance or conveyance charges and the usual daily batta of Rs. 2 50. The grievance of the workmen appears to have been that the batta was meagre in view of the increase in the cost of living. It so happened that a vehicle bearing No. KLC 2411 of United Transport Co., Mangalore got stuck up somewhere near Vittal, a place about 30 miles away from Mangalore and the Manager of the Transport Company requested the II party to attend to its repairs. The management orally asked the aggrieved workmen to proceed to Vittal and to attend to the job. The workmen declined to attend to it. There upon the management issued orders in writing to the aggrieved workmen individually to proceed to Vittal and to attend to the vehicle there. This did not have the desired effect. The management regarded this as a misconduct on their part and issued a charge sheet-*cum*-Show cause notice to each one of them as to why disciplinary action should not be taken against them for their misconduct. All the four aggrieved workmen filled a joint reply as per Ex. M-3. This is a very important document and I shall reproduce it here in toto.

To

The Office Manager,
Messers. P. V. Pai and Co.,
MANGALORE.

SIR,

In reply to your notice dated 13th August 1966, requiring us to explain in writing within three days, we, the undersigned beg to state as follows:

It is true that we were asked to proceed for repairs of the vehicles away from Mangalore. In this conncetion at every stage we have explained our difficulty to attend work outside Mangalor at the present rate of Batta. It is only by way of mutual obligation that we were attending such work outside our workshop and Mangalore. It is not fair on the part of the Management to compel us against our wishes in this method and it is not also correct to state that such orders are lawful. We have also clearly

stated that when you asked us to sign some papers purported to be new conditions and rules of service and we refused to sign them. We once again emphatically state that it is not a part of our duty to attend repairs or any other work outside the premises of the workshop. However, we would co operate with the management provided we are paid proper remuneration and over-time wages for such work.

In explaining these facts we beg to submit that our refusal work anywhere outside the premises of the workshop does not constitute any misconduct and as such does not entail any punishment.

Mangalore
16th August 1966

Yours faithfully,

1. Sd/- (K. Sheena Naik)
2. „ (U Umesh)
3. „ (M. Lakappa Setty)
4. „ (J. Vishwanath Naik)

This reply did not find favour with the management. They, therefore, decided to hold a domestic enquiry and appointed Sri K. P. Kasturi, the Automobile Engineer as an Enquiry Officer to conduct the enquiry. The latter issued notices of enquiry to the individual workman and held the domestic enquiry. The aggrieved workmen inspite of service of notice of hearing chose to remain absent. The enquiry officer thereupon proceeded with the enquiry *ex parte* and examined management witnesses. The domestic enquiry has been conducted seperately against each one of the workmen. The enquiry officer has made an endorsement on the statement of the witnesses "The worker was not present even though he was asked to be present by a letter delivered to him on 19th August 1966." After concluding the enquiry, the enquiry officer recorded his findings. After going through these findings, the management decided to dismiss the workmen and accordingly they passed separate order of dismissal in respect of each one of the aggrieved workmen.

5. The I Party assails the order of dismissal on the ground that it is violative of the principles of natural justice. It is not disclosed in the Claim Statement as to how or in what manner the principles of natural justice have been ignored or violated

by the management. *During the course of arguments* Sri Srinivas, the learned representative of the I Party made much of the fact that the management witnesses have been examined behind the back of the aggrieved workmen. Sri K. Sheena Naik, one of the aggrieved workmen who stepped into the witness box during the course of his Examination-in-Chief deposed that as per the notice of the management, he presented himself for the enquiry and also the other workmen. At the place of enquiry Sri Kamalaxa Pai, Surendra Pai and M. R. Bhat were present. Kamalaxa Pai asked them to have their say in the matter, they took down what they stated and asked them to put their signatures on the statements. They in turn asked Kamalaxa Pai to read over the statement and furnish them copies of the same. They did not do so. Hence, they also refused to sign the statement. No management witnesses were examined in their presence. It may be seen that these facts have not been stated either in the Claim statement filed in the Court or before the Assistant Labour Commissioner and Consoliation officer, Mangalore, who conducted the consiliation proceedings *vide* Exs. W-2 and W-3 Sri K. P. Kasturi, M.W.1, who was examined at the specific request of the representative of the I party has categorically deposed that Exs. M-4, 11, 18 and 25 are the notices issued to the workmen asking them to participate in the domestic enquiry. The workmen did not attend the enquiry. He has made an endorsement to this effect on the statements of the witnesses. There is no reason to disbelieve the sworn testimony of Sri K. P. Kasturi M. W. 1. The deposition of Sheena Naik, W.W. 1 is a travesty of truth. While admitting that the workmen had received the notices of hearing of the management, he twists the facts to say that Sri Kamalaxa Pai and others of the management asked to have their say in the matter and the rest of it. Even though what Sheena Naik has stated was the truth, there should have been no difficulty for the I Party to put a couple of other workmen in the witness box and establish these facts by positive evidence. The I Party has obvioulsy tried to spring a surprise in the Court by setting up this story for the first time. The crux of the matter is whether the aggrieved workmen were justified in taking the stand that it was not obligatory on their part to tender out-coor service. Obviously, the aggrieved workmen gave the good-bye to a constitutional method open to them. On the other hand they took up a defiant attitude and disobeyed the oral as well as written orders of the management. In a ruling

reported in 1958 (1) LLJ page 110, the Industrial Court has taken the view :

> "It is true that there may be cases where an order is on the face of it obviously illegal, of where it is unreasonable or impossible, or where in cases where insubordination of the workmen was deliberately provoked by the management in which refusal to obey may be justified. But as a rule a worker must obey the order, and if in his opinion the order is illegal and the illegality is technical and of such a nature against which remedy is open to him under the law, the proper course for him is to obey the order when it is given and protest about its illegality in a seperate proceeding. If it is allowed to a worker to judge about the illegality of every order and to disobey it if he thinks it is not legal, it would be impossible for the management to control the workers and to get the work done. But disobedience of an order cannot be justified merely because the order is technically illegal."

The ruling cited above is on all fours with the facts of the present case. Sri Srinivas, the learned representative of the I Party argued that when the workmen not present at the time of the domestic enquiry and when the enquiry officer had examined the management witnesses, he should have issued notices again to the aggrieved workmen to be present on a subsequent date and time specified in notice for the purpose of cross-examining the management witnesses. He cited 1965 (2) LLJ page 66 in support of his argument. I am sorry to observe that his argument is not supported by this ruling. The ruling cited by him is a case of departmenal enquiry wherein the statement recorded from witnesses in the absence of the delinquent employee were put to them at the time of the regular enquiry and after the witnesses had accepted them to be correct the concerned employee was furnished with the copies of such statement and was called upon to cross-examine the witnesses. Such procedure in the circumstances was held to be in substantial compliance with the provisions of the relevent rule. It was held that the departmental enquiry was not vitiated by principles of natural justice, on the ground that the statements of the witnesses recorded in the absence of the concerned municipal servant were taken as their evidence in Examination-in-Chief. In the instant case

the aggrieved workmen were given notices of a domestic enquiry as admitted by them. In spite of service of notices, they absented themselves. Such being the case, they are to hold themselves responsible for the natural consequences that followed. Now they cannot be heard to say that the management should have given them a second notice of hearing and called upon them to cross-examine the management-witnesses. Sri Srinivas, during the course of his arguments, referred to another ruling reported in 1960 (2) LLJ page 175. In this ruling it has been observed victimisation means one of two things.

> "The first is when the workman concerned is innocent and yet he is being punished because he has in some way displeased the employer for example by being an active member of a union of workmen, who were acting prejudicially to the employer's interests. The second case is where an employee has committed an offence but he is given a punishment quite out of proportion to the gravity of the offence, simply because he has incurred the displeasure of the employer in a similar manner as mentioned above. But where it is found that the employee is guilty of gross misconduct then there could not be any question of victimisation because it merits dismissal by itself."

In the instant case, the workmen who were attending to out-door work, all along, all of a sudden took a defiant attitude and refused to carry out the oral as well as the written order of the management. In their explanation Ex. M-3 they categorically stated :

> "We once again emphatically state that it is not a part of our duty to attend repairs or any other work outside the premises of the workshop."

This stand of the workmen, as I have said earlier, cannot be supported for a moment. If this were to be allowed it would spell the disaster of the industry as observed by the Industrial Tribunal, Bombay. The proper course for the workmen was to obey the order when it was given and protest about its illegality in a seperate procedure. On an over-all consideration of the facts, circumstances and the evidence in the case, I decide the points of dispute framed by the Government in favour of the II Party. In view of the fact that there is not a shred of evidence to show

that the domestic enquiry is violative of the principles of natural justice, the issue framed by this Court is also decided against the I Party.

AWARD.

The management of M/s P. V. Pai and Company, Mission Street. Mangalore-1 are justified in dismissing Sriyuths K. Sheena Naik, U. Umesh, M. Lakappa Shetty and J. Vishwanath Naik. These workmen are not entitled to reinstatement with back wages or to any other relief. In view of the circumstances of the case, the parties shall bear their own costs.

SYED AZIZUDDIN AHMED,
Presiding Officer,
Labour Court, Hubli.

Place: Hubli
Dated: 23-11-1967.

ANNEXURE

Reference (ID) LCH No. 59/67

Witnesses examined for the I Party

M.W.-1 K. Sheena Naik

Witnesses examined for the II Party

M.W.-1 K. P. Kasturi

Documents marked for the I Party

Exhibits:

W-1 Demand notice dated 25th August 1967

W-2 Claim statement filed before the Assistant Commissioner.

W-3 Factual Report of the Consiliation Officer.

Documents marked for the II Party

M-1 Notice dated 12th August 1966 issued to K. Sheena Naik.

M-2 Show cause notice dated 13th August 1966 issued to K. Sheena Naik.

M-3 Explanation of Sheena Naik and three others dated 16th August 1966.

M-4 Enquiry notice dated 19th August 1966.

M-5 Enquiry papers dated 20th August 1966.

M-6 Enquiry Officer's Report dated 10th August 1966.

M-7 Order of dismissal dated 24th August 1966 of K. Sheena Naik

M-8 Notice dated 12th August 1966 to Umesh.

M-9 Show cause notice dated 13th August 1966 issued to Umesh.

M-10 Copy of Explanation Ex. W-3

M-11 Enquiry notice issued to Umesh.

M-12 Enquiry papers dated 20th August 1966

M-13 Enquiry Officer's report dated 20th August 1966

M-14 Dismissal order dated 24th August 1966 of Umesh

M-15 Notice dated 12th August 1966 issued to Lakappa Shetty

M-16 Show cause notice dated 13th August 1966 issued to Lakappa.

M–17 Explanation (copy) given by Umesh (Copy of Ex. W-8)
M–18 Enquiry notice dated 19th August 1966.
M–19 Enquiry papers dated 20th August 1966
M–20 Enquiry Officer's report dated 20th August 1966
M–21 Dismissal order dated 24th August 1966 of Lakapa Shetty
M–22 Notice dated 12th August 1966 issued to J. Vishwanath.
M–23 Show cause notice dated 13th August 1966 to J. Vishwanath
M–24 Explanation of Sri Vishwanath dated 16th August 1966
M–25 Enquiry notice dated 19th August 1966.
M–26 Enquiry papers dated 20th August 1966.
M–27 Enquiry Officer's Report dated 20th August 1966.
M–28 Dismissal Order dated 24th August 1966 of J. Vishwanath.

SYED AZIZUDDIN AHMED,
Presiding Officer,
Labour Court, Hubli

Place : Hubli
Date : 23-11-1967

ORDER

Bangalore, dated 29th November 1967.

S. O. 2369.—WHEREAS by State Government Order No. FCL 341 LLD 67, dated 29th July 1967, the Industrial Dispute between the Workmen and the Management of M/S. P. V. Pai and Company, Mangalore was referred to the Labour Court, Hubli for adjudication

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*

[No. FCL 341 LLD 67.]

By Order and in the name of the Governor of Mysore,

G. G. PUROHIT, *Under Secy.*